

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LAWRENCE W. HILSDORF,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

08-CV-5290 (NGG)

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NICHOLAS G. GARAUFIS, United States District Judge.

On December 31, 2008, Plaintiff Lawrence W. Hilsdorf ("Hilsdorf"), *pro se*, filed a Complaint appealing the Social Security Administration's ("SSA's") unfavorable decision regarding his application for disability insurance benefits. (Docket Entry # 1.) After briefing by the parties, the court issued a Memorandum and Order on July 15, 2010, remanding proceedings to the Commissioner, and directing the administrative law judge to hold a new hearing regarding Hilsdorf's claim and to further develop the evidentiary record. (Docket Entry # 17.) The court further directed the Commissioner to issue a new administrative decision within 120 days of the court's Memorandum and Order, *i.e.*, by November 12, 2010. On November 12, 2010, Hilsdorf filed a letter with the court claiming that he had yet to receive a decision by the SSA regarding his claim and requested a calculation of benefits. (Docket Entry # 19.) The same day, the court ordered Hilsdorf to file a proper motion for relief and to attach all pertinent documents to his motion. Plaintiff did so on November 17, 2010, and included a new decision by the ALJ dated November 8, 2010. (Docket Entry # 20.) Plaintiff complains, however, that he did not receive the decision until November 13, 2010, and that his attorney – whom he does not identify – did not receive a copy of the decision until November 15, 2010. (*Id.*) Regardless, because the Commissioner issued a decision within the time frame specified by the court, the court finds that

the Commissioner has complied with the court's July 15, 2010 Order with respect to the timing of its decision.

Plaintiff may now wish to appeal the Commissioner's most recent decision. In appealing a decision of the Commissioner following a court-ordered remand, a plaintiff has two avenues of appeal: (1) the plaintiff may file objections with the SSA Appeals Council within thirty days of the decision; or (2) the plaintiff may directly appeal the new decision to the district court after the decision becomes "final." 20 C.F.R. § 404.984. Under the Commissioner's regulations, such decisions become "final" sixty days after they are signed. Id. § 404.984(c). The plaintiff has sixty days thereafter to appeal the Commissioner's decision. Id. § 404.984(d).

Here, it is unclear from the record whether Plaintiff appealed the Commissioner's most recent decision to the SSA Appeals Council. If he did, he must wait until the Appeals Council issues its decision before filing a Complaint in this court. If Plaintiff did not file such an appeal, the Commissioner's decision became final on January 7, 2011, and Plaintiff has until March 8, 2011 to file a new Complaint in this court appealing the decision of the Commissioner. The court directs the Clerk of Court to mail a copy of this Order to Plaintiff by overnight mail, and to place a copy of this Order on the public docket.

SO ORDERED.

Dated: Brooklyn, New York
January 25, 2011

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge